

Chief Judge Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 HENRY ROSENAU,)
)
 Defendant.)

NO. CR06-157MJP

GOVERNMENT'S REPLY TO
DEFENSE RESPONSE TO STATUS
REPORT

COMES NOW the United States of America, by and through Jenny A. Durkan, United States Attorney for the Western District of Washington, and Marc A. Perez and Susan M. Roe, Assistant United States Attorneys for said District, and files this Reply to the Defendant's Response to the Status Report of the Mutual Legal Assistance Treaty request in the above entitled case. The defendant opposes the requested trial continuance necessary for the MLAT processing on the basis that the Canadian Court has not yet issued a Sending Order and, further, because the defendant "has not been afforded an opportunity to be heard by the court in British Columbia." *Response*, page 4. The defendant notes his objection to the production of Canadian evidence, in witness or other form. The Court asked for this Government Reply, which is intended to more fully explain the process.

The Office of International Affairs, Department of Justice, was consulted and has advised the undersigned of the following. OIA has been informed by the International Assistance Group, of Justice Canada, that this MLAT request has been approved by Justice

1 Canada. That means, that United States' request for the assistance meets Justice Canada's
2 criteria and law pursuant to the Treaty. Having met the Canadian legal threshold, Justice
3 Canada has sent out communications to the various agencies for their evidence, which
4 includes official records and testimony. In the case at bar, Justice Canada currently is
5 gathering the material requested pursuant to the MLAT and acting on the requested civilian
6 depositions.

7 The agencies contacted by Justice Canada will submit the records and testimony.
8 Once all requested evidence is assembled, a Canadian court will review the submissions in a
9 "Sending Hearing." Typically, that results in the Court issuing a Sending Order which
10 decrees the requested evidence be turned over to the petitioning country. Justice Canada,
11 pursuant to the Sending Order, releases the evidence to the U.S. Department of Justice.

12 The Court may, however, review certain aspects of the evidence and determine not to
13 release it to the petitioning foreign country. This, apparently is what occurred in the
14 Canadian case, *United States v. Schneider*, 2002 BCSC 1014, cited by the defendant.

15 OIA noted that how the Sending Hearing is conducted, whether a defendant appears,
16 what is presented, and what will be sent is governed solely by Canadian authorities and that
17 the United States has no role, whatsoever, in the matter.

18 Additionally, the Treaty is between countries and is designed for governments to
19 determine how and what governments will share internationally. The Treaty does not give
20 other entities standing in an MLAT request. "This Treaty is intended solely for mutual legal
21 assistance between the Parties. The provisions of this Treaty shall not give rise to a right on
22 the part of a private party to obtain, suppress or exclude any evidence or to impede the
23 execution of a request." *Exhibit 1*, MLAT Treaty, Article II, 4. "The article specifically
24 states that it is not intended to create rights in private parties either to gather evidence or
25 secure other assistance or to suppress or exclude in civil or criminal proceedings evidence
26 obtained under the Treaty." *Exhibit 2*, *Letter of Submittal*, page 2, lines 6 - 10. It appears
27 that, according to the terms of the Treaty, the defendant has no right "to be heard" at
28 Sending Hearing. Whether or not a Canadian court allows him to be heard is within the

1 Canadian court's power but the denial of such is not a basis for exclusion, in a United States
 2 trial, of the evidence obtained pursuant to the MLAT.

3 Therefore, the government agrees that no Sending Order has been issued yet. It is the
 4 final step which is anticipated. OIA has been assured that Justice Canada is moving forward
 5 on this request, knowing the trial is pending.

6 Once a Sending Order is issued, presuming it allows the requested evidence including
 7 depositions, the government will move promptly to arrange receipt of the evidence, to request
 8 this Court's Order allowing the Canadian depositions, and to take the necessary steps for the
 9 depositions (including obtaining country clearance). It is hoped that this can still be
 10 accomplished by late March. Therefore, the government renews its request that the trial be
 11 rescheduled for up to 30 days, in order to allow the Canadian legal process to proceed.

12 DATED this 22nd day of February, 2012.

13 Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 22, 2012, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the attorney(s) of record for the defendant(s). I hereby certify that I have served the attorney(s) of record for the defendant(s) that are non CM/ECF participants via telefax.

s/Ryan Hebert

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